

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES INVESTOR PROTECTION :
CORPORATION, :
:
Plaintiff, : Adv. Pro. No. 08-1789 (SMB)
:
v. : SIPA LIQUIDATION
:
BERNARD L. MADOFF INVESTMENT SECURITIES, : (substantively consolidated)
LLC :
:
Defendant. :
-----X

In re: :
:
BERNARD MADOFF, :
:
Debtor. :
:
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IRVING H. PICARD, Trustee for the Liquidation of: :
Bernard L. Madoff Investment Securities LLC, : Adv. No. 10-04311 (SMB)
:
Plaintiff, :
:
v. :
:
ANDREW H. COHEN, :
:
Defendant. :
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**DECLARATION OF GREGORY SCHWED IN SUPPORT OF PROPOSED
INTERVENORS' OBJECTIONS TO PROPOSED RULING DENYING
MOTION TO INTERVENE OR PARTICIPATE AS AMICUS CURIAE**

I, Gregory Schwed, hereby declare as follows:

1. I am a partner of the law firm of Loeb & Loeb LLP, counsel for certain of the good-faith former customers (“Customers”) of the registered broker-dealer, Bernard L. Madoff Investment Securities LLC (“Madoff Securities”), which was run by the notorious fraudster, Bernard Madoff.

2. This Declaration is submitted in support of the Proposed Intervenor’s Objections to Proposed Ruling Denying Motion to Intervene or Participate as *Amicus Curiae* (the “Opposition”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Opposition.

3. I make this declaration of my own personal knowledge or belief, and if called as a witness herein, I could and would competently testify to the contents hereof.

4. Upon information and belief, Customers are defendants in the 57 adversary proceedings brought by the Trustee identified on the Order (defined below). As of the date hereof, only 50 of those adversary proceedings remain pending. Those still pending adversary proceedings are identified on Schedule 1 to the Opposition. The complaints in the 57 adversary proceedings sought to avoid and recover some \$197 million in account withdrawals paid to Customers, made by Bernard L. Madoff Investment Securities, LLC (“Madoff Securities”).

5. Upon information and belief, Customers are “good faith” defendants – that is, the Trustee has never alleged that any of them had any knowledge or notice of the fraud perpetrated by Madoff Securities and its principal, Bernard Madoff. Indeed, the Trustee has conceded that good faith is not an issue in Customers’ (or Cohen’s) cases. Upon information and belief, Customers’ and Mr. Cohen’s customer-broker relationships with Madoff Securities were functionally identical.

6. On October 9, 2015, Customers filed their Motion to Intervene on Common Legal Issues (the “Intervention Motion”). A true and correct copy of the Intervention Motion is attached as Exhibit A.

7. The Intervention Motion was supported by the Declaration of Gregory Schwed in Support of Motion to Intervene on Common Legal Issues (the “Initial Schwed Declaration”). True and correct copies of the Initial Schwed Declaration and the exhibits thereto are attached as Exhibit B.

8. On November 11, 2015, Customers filed their Reply Memorandum of Law in Support of Motion to Intervene on Limited Common Legal Issues (the “Reply”). A true and correct copy of the Reply is attached as Exhibit C.

9. On April 25, 2015, Judge Bernstein issued what he styled as the Memorandum Decision Denying Motion to Intervene or to Participate as *Amicus Curiae* (the “Opinion”). A true and correct copy of the Opinion is attached as Exhibit D.

10. On April 28, 2015, Judge Bernstein entered what he styled as an Order Denying Motion to Intervene or to Participate as Amicus Curiae (the “Order”). A true and correct copy of the Order is attached as Exhibit E.

11. A true and correct copy of the Second Revised Joint Pretrial Order entered October 9, 2015 in the *Cohen* adversary proceeding is attached as Exhibit F.

12. A true and correct copy of the Answer of certain Evenstad family defendants in Adv. Proc. No. 10-4342 is attached as Exhibit G.

13. A true and correct copy of the Transcript of Proceedings of a hearing held before Judge Bernstein on September 30, 2015 is attached as Exhibit H.

14. A true and correct copy of trial exhibit DX1 (Mr. Cohen's 2003 tax returns) is attached as Exhibit I.

15. A true and correct copy of trial exhibit DX2 (Mr. Cohen's 2004 tax returns) is attached as Exhibit J.

16. A true and correct copy of trial exhibit DX3 (Mr. Cohen's 2005 tax returns) is attached as Exhibit K.

17. A true and correct copy of trial exhibit DX4 (Mr. Cohen's 2006 tax returns) is attached as Exhibit L.

18. A true and correct copy of trial exhibit DX5 (Mr. Cohen's 2007 tax returns) is attached as Exhibit M.

19. A true and correct copy of trial exhibit DX7 (the Affidavit of R. Paul Speece and two exhibits thereto) is attached as Exhibit N.

20. Consolidated briefing was conducted on seven issues in the Madoff Securities liquidation, including: (i) the Trustee's standing; (ii) the applicability of Bankruptcy Code Section 546(e); (iii) the calculation of net equity; (iv) the treatment of inter-account transfer issues; (v) the effect of extraterritoriality on the Trustee's avoidance claims; (vi) the jurisdiction of the Bankruptcy Court after *Stern v. Marshall*; and (vii) the previous contested proceedings on "value" before Judge Rakoff and the bankruptcy court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 9, 2016
New York, New York

/s/ Gregory Schwed
Gregory Schwed